

JAMAINE LEMARR WOODS,)
)
 Plaintiff,)
)
 v.) **No. CIV 20-051-RAW**
)
 JIM CROW,)
)
 Defendant.)

Plaintiff is a pro se state prisoner in the custody of the Oklahoma Department of Corrections (DOC) who is incarcerated at Jackie Brannon Correctional Center in McAlester, Oklahoma. He filed this civil rights complaint pursuant to 42 U.S.C. § 1983, seeking relief for alleged constitutional violations at his facility (Dkt. 1). The defendant is Jim Crow.

Plaintiff alleges that in September and October of 2019, doctors recommended he see a cardiologist and a neurologist. He claims that because he did not receive that medical care, he has suffered three strokes in addition to his previous strokes and heart attack. The DOC allegedly knows Plaintiff has congestive heart failure, coronary artery disease, uncontrolled hypertension, and an enlarged heart. After review of the complaint, the Court finds Plaintiff must file an amended civil rights complaint on the Court's form, as set forth below.

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b);

28 U.S.C. § 1915(e)(2)(B).

The pleading standard for all civil actions was articulated in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). See *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009). To avoid dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a complaint must present factual allegations, assumed to be true, that “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. The complaint also must contain “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. A court must accept all the well-pleaded allegations of the complaint as true, even if doubtful in fact, and must construe the allegations in the light most favorable to the plaintiff. *Id.* at 555-56. “So, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” the cause of action should be dismissed. *Id.* at 558. The Court applies the same standard of review for dismissals under 28 U.S.C. § 1915(e)(2)(B)(ii) that is employed for Fed. R. Civ. P. 12(b)(6) motions to dismiss for failure to state a claim. *Kay v. Bemis*, 500 F.3d 1214, 1217-18 (10th Cir. 2007).

A pro se plaintiff’s complaint must be broadly construed under this standard. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The generous construction given to the pro se litigant’s allegations, however, “does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Notwithstanding a pro se plaintiff’s various mistakes or misunderstandings of legal doctrines or procedural requirements, “if a court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so” *Id.* The court, however, “will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997).

Defendant Crow

Plaintiff has named Jim Crow, the alleged Director of the Oklahoma DOC, as the sole defendant in this action. According to the DOC website at <http://doc.ok.gov/directors-office>, however, the DOC Director is Scott Crow.¹ The Court notes that Plaintiff has made no allegations of the personal participation of Defendant Crow in the alleged failure to provide medical treatment to Plaintiff.

“Personal participation is an essential allegation in a § 1983 claim.” *Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (citations omitted). *See also Mee v. Ortega*, 967 F.2d 423, 430-31 (10th Cir. 1992). Plaintiff must show that a defendant personally participated in the alleged civil rights violation. *Mitchell v. Maynard*, 80 F.3d 1433, 1441 (10th Cir. 1996). Supervisory status is not sufficient to support liability under § 1983. *Id.* *See also Polk County v. Dodson*, 454 U.S. 312, 325 (1981).

Amended Complaint

Within twenty-one (21) days of the entry of this Order, Plaintiff must file an amended complaint on this Court’s form. The amended complaint must set forth the full name of each person he is suing under 42 U.S.C. § 1983. *See Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1237 (10th Cir. 1999) (holding that “a cause of action under § 1983 requires a deprivation of a civil right by a ‘person’ acting under color of state law”). Further, the names in the caption of the amended complaint must be identical to those contained in the body of the amended complaint, pursuant to Fed. R. Civ. P. 10(a).

The amended complaint must include a short and plain statement of when and how

¹ The Court takes judicial notice of the website of the Oklahoma Department of Corrections at <http://doc.ok.gov/directors-office>. *See Triplet v. Franklin*, 365 F. App’x 86, 92, 2010 WL 409333, at *6 n.8 (10th Cir. Feb. 5, 2010) (taking judicial notice of the Oklahoma DOC website pursuant to Fed. R. Evid. 201).

each named defendant violated Plaintiff's constitutional rights and showing he is entitled to relief from each named defendant. *See* Fed. R. Civ. P. 8(a). Plaintiff also shall identify a specific constitutional basis for each claim. *See id.* He is admonished that simply alleging that a defendant is an employee or supervisor of a state agency is inadequate to state a claim. Plaintiff must go further and state how the named defendant's personal participation violated his constitutional rights. The "denial of a grievance, by itself without any connection to the violation of constitutional rights alleged by the plaintiff, does not establish personal participation under § 1983." *Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009) (citations omitted). The Court only will consider claims "based upon the violation of a plaintiff's personal rights, and not the rights of someone else." *Archuleta v. McShan*, 897 F.2d 495, 497 (10th Cir. 1990).

The amended complaint must include all claims and supporting material to be considered by the Court. *See* Local Civil Rule 9.2(c). It must be complete in itself, including exhibits, and may not reference or attempt to incorporate material from the original complaint or exhibits. *Id.* An amended complaint supersedes the original complaint and renders the original complaint of no legal effect. *See Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991); *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990). *See also* Local Civil Rule 9.2(c). Pursuant to Local Civil Rule 5.2(a), the amended complaint must be clearly legible, and only one side of the paper may be used.

ACCORDINGLY, Plaintiff is directed to file within twenty-one (21) days an amended complaint on the Court's form as directed in this Order. The Court Clerk is directed to send Plaintiff a copy of the form for filing an amended civil rights complaint in this Court. Failure to comply with this Order will result in dismissal of this action without further notice.

IT IS SO ORDERED this 21st day of February 2020.

A handwritten signature in cursive script, reading "Ronald A. White", written over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma